



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

November 29, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Brian Henn**
Tax Registry No. 950580
69 Precinct
Disciplinary Case No. 2021-23353

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on May 5 and 26, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2021-23353

1. Police Officer Brian Henn, while assigned to the 61st Precinct and on duty, on or about and between December 15, 2019 and December 19, 2019, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by displaying offensive sexual, disparaging, or inappropriate material or making disparaging remarks by text messages through an electronic or other device. *(As amended)*

P.G. 205-37

**SEXUAL, ETHNIC, RACIAL,
RELIGIOUS, OR OTHER
DISCRIMINATORY SLURS
THROUGH DISPLAY OF
OFFENSIVE MATERIAL**

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Police Officer Brian Henn, while assigned to the 61st Precinct and on duty, on or about and between January 1, 2020 and May 31, 2020, on multiple occasions, made inappropriate remarks about race, religion, national origin, color, or ethnicity to or in the presence of another Member of the Service. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT
EMPLOYMENT
DISCRIMINATION**

P.G. 205-36

3. Said Police Officer Brian Henn, while assigned to the 61st Precinct, on or about September 15, 2020, made inaccurate statements during an official Department interview.

P.G. 203-10, Page 1, Paragraph 5

P.G. 203-08

**PUBLIC CONTACT –
PROHIBITED CONDUCT
FALSE OR MISLEADING
STATEMENTS**

In a Memorandum dated July 12, 2022, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Brian Henn guilty of Specification Nos. 1 and 3 and guilty-in-part of Specification No. 2 in Disciplinary Case No. 2021-23353. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After reviewing the facts and circumstances of this matter, I have determined that a higher penalty is warranted.

In this matter, Police Officer Henn made repeated disparaging remarks to fellow members of the service. While I agree with Assistant Deputy Commissioner Jeff S. Adler's findings that some of the remarks were "friendly banter," the repeated and insensitive remarks were nonetheless offensive and cannot be tolerated. Thus, I disagree with Assistant Deputy Commissioner Jeff S. Adler's penalty recommendation and find that Police Officer Henn's conduct does warrant a higher penalty and a period of dismissal probation.

Therefore, Police Officer Henn shall forfeit fifty (50) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.


Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

July 12, 2022

-----X
In the Matter of the Charges and Specifications :
- against - :
Police Officer Brian Henn :
Tax Registry No. 950580 :
69 Precinct :
-----X

Case No.
2021-23353

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Brian Henn, while assigned to the 61st Precinct and on duty, on or about and between December 15, 2019 and December 19, 2019, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by displaying offensive sexual, disparaging, or inappropriate material or making disparaging remarks by text messages through an electronic or other device. *(As amended.)*

P.G. 205-37

SEXUAL, ETHNIC, RACIAL,
RELIGIOUS, OR OTHER
DISCRIMINATORY SLURS
THROUGH DISPLAY OF
OFFENSIVE MATERIAL

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Police Officer Brian Henn, while assigned to the 61st Precinct and on duty, on or about and between January 1, 2020 and May 31, 2020, on multiple occasions, made inappropriate remarks about race, religion, national origin, color, or ethnicity to or in the presence of another Member of the Service. *(As amended.)*

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 205-36

EMPLOYMENT DISCRIMINATION
PERSONNEL MATTERS

3. Said Police Officer Brian Henn, while assigned to the 61st Precinct, on or about September 15 2020, made inaccurate statements during an official Department interview.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 203-08

FALSE OR MISLEADING
STATEMENTS
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 5 and 26, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Michael Said and Sergeants Smithu Samuel and Richard Beary as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Specification 1 (offensive text messages): Guilty

Specification 2 (inappropriate remarks): Guilty-in-part

Specification 3 (inaccurate statements): Guilty

Recommended penalty: 40 vacation days.

ANALYSIS

Respondent faces charges stemming primarily from his interactions with a colleague at the 61 Precinct, Police Officer Michael Said. It is alleged that on one occasion in December 2019, Respondent sent text messages to Officer Said that contained graphic, offensive images; in connection with that incident, Respondent also is charged with making inaccurate statements at his official Department interview. Separately, it is alleged that on three unspecified dates that occurred around the first five months of 2020, Respondent made inappropriate remarks to Officer Said; on two of those occasions, Respondent is accused of directing his comments to Sergeant Samuel as well. Several months after the alleged incidents, an EEO complaint was filed against Respondent.

Police Officer Michael Said testified that during the time period in question, he was the operator for Sergeant Samuel at the 61 Precinct. He was in a different squad than Respondent, but they worked the same tours. Officer Said described Respondent as a “great cop,” from whom he learned a lot. (Tr. 148-50)

In December 2019, Officer Said was selected by the C.O. as the precinct’s representative to attend a dinner with Attorney General Barr. Officer Said testified that on the evening of December 17, 2019, he received from Respondent a series of text messages (Dept. Exs. 3-6). The texts suggested that Officer Said was a “brown-nose” for being chosen to attend the dinner. Specifically, the texts included a photograph of Officer Said at the dinner, with a message from Respondent asking how he ended up at the event. Respondent then sent two memes: one was a picture of a pack of “Ass Kisser” gum for “Brown Nosers,” and the other was a box of “Clean ‘N Dirty Blow Job Knee Pads,” which included a graphic sexual image. Officer Said testified that he interpreted the texts as Respondent suggesting that Officer Said was “asking for favors.” Officer Said stated that the texts “bothered [him] a little bit,” but he “brushed it off” and did not file a complaint against Respondent at the time. Months later, he reported these texts as part of his EEO complaint. (Tr. 158-60, 176-83, 186)

According to Officer Said, there were two occasions in the first five months of 2020 when Respondent made disparaging remarks to him. Officer Said testified that in one incident, which occurred in late December or early January, near the rear entrance of the precinct, Respondent said to him and Sergeant Samuel that they received overtime based on their skin color. Sergeant Samuel did not say anything in response, while Officer Said just shook his head and walked away, and did not, at that time, report what was said. He testified that he “didn’t

want any problems,” and that he “just want[ed] to work in peace, come and go, and be left alone.” (Tr. 150-55, 157, 165-69, 175, 187, 190-91)

Officer Said testified that on a second occasion, in either late 2019 or early 2020, he and Respondent were together in the locker room before roll call when Respondent stated to him, “You Muslim people shouldn’t be here, shouldn’t be on the job.” Respondent also stated, “You guys are bombers,” and “in terrorist groups.” Officer Said testified that before making the comments, Respondent looked at his nametag; at the time, Officer Said, who is a Christian Egyptian, went by a different surname, “Mikhail,” which was reflected on his nametag. According to Officer Said, Respondent also had heard him speaking Arabic in the past. Officer Said testified that he spoke with his union delegate about what Respondent said, but did not make a formal complaint until a couple of months later “after things got out of control.” In June 2020, Sergeant Samuel initiated the EEO complaint against Respondent. (Tr. 152-55, 157, 170-75, 185)

Sergeant Smithu Samuel testified that he was the patrol sergeant at the 61 Precinct during the time period in question, and Police Officer Said was his operator. He and Officer Said did not have an off-duty relationship, other than occasionally smoking cigars in the parking lot outside the stationhouse. At the time, Respondent was a patrol officer in a different squad who worked the same tour as the sergeant and Officer Said. Sergeant Samuel described Respondent as an “excellent officer,” who often led the precinct in overtime hours. (Tr. 103-04, 112-13, 117-18)

On June 19, 2020, Sergeant Samuel contacted EEO on behalf of Officer Said, to report disparaging remarks made by Respondent. Sergeant Samuel testified that on two separate dates, he, himself, was present when Respondent made such remarks. Specifically, on one occasion

inside the stationhouse, while Sergeant Samuel and Officer Said were behind the desk doing overtime in connection with stolen rims and tires, Respondent stated to them that the reason they get overtime is because they are Muslim, and because of their skin color. In a separate incident outside the precinct in the parking lot, Respondent made a similar comment to the sergeant and Officer Said, stating that they only receive overtime because of their skin color, for which they receive special treatment. Sergeant Samuel testified that neither he nor Officer Said is a Muslim; the sergeant was "born and raised Indian," while Officer Said is from the Middle East, and they both were raised Catholic. (Tr. 104-11, 113, 120, 128-30, 134)

According to Sergeant Samuel, Officer Said appeared visibly upset after the comments, but the sergeant told him to "let it go." Although he was a mandatory reporter, Sergeant Samuel did not notify EEO immediately after Respondent made these comments, since the sergeant chalked it up to "ignorance" and "immaturity" on the part of Respondent. When Sergeant Samuel did make a notification to EEO in June 2020, he informed his C.O. as well; however, Sergeant Samuel only told the C.O. about text messages that had been exchanged between Respondent and Officer Said, but said nothing about the Muslim remarks. It was only after EEO asked him to make a more detailed statement that Sergeant Samuel mentioned the two times where Respondent had said they were getting special treatment because of their skin color. (Tr. 112, 121-28)

Sergeant Samuel conceded that he could not recall the precise dates that Respondent made these remarks. He could only say that the comments occurred in the first half of 2020. When he called EEO to make his report, Sergeant Samuel told them that the "rims and tires" overtime remarks were made in February 2020. However, at his official Department interview on June 23, 2020, Sergeant Samuel stated that one of the incidents where offensive comments

were made occurred sometime in May 2020, and he provided no details as to the date of the second incident. (Tr. 113-14, 128-37)

A recording of Respondent's official Department interview, and the accompanying transcript, were introduced into evidence (Dept. Ex. 1 & 1A). In that interview, which occurred on September 15, 2020, Respondent stated that he and Officer Said only texted each other regarding work-related matters. Respondent was shown an isolated screenshot of the "Ass Kisser" and "Knee Pads" memes (Resp. Ex. A), and asked whether, in December 2019, he sent Officer Said a text with those images. Respondent conceded that he might have sent it, but since his phone number did not appear on the text, and he did not have the image saved on his phone, he could not be sure. (Dept. Ex. 1A at 4, 8-9, 11-12, 15-16).

At trial, Respondent testified that he now remembers that he did text the "Ass Kisser" and "Knee Pads" memes to Officer Said. Respondent explained that at the time of his official Department interview in September 2020, they showed him only a photograph of the two memes (Respondent Ex. A), without including any context, such as the surrounding text message exchange. The memes looked familiar to him, but he could not recall sending them to Officer Said nine months earlier in December 2019. As such, when the questioner asked him whether he sent the memes, Respondent did not admit to doing so, but did say it was possible. (Tr. 195, 202-07)

On a later date, when Respondent was reviewing the discovery material in this matter with his defense counsel, he was shown the surrounding texts and did recall sending the memes to Officer Said. Respondent testified that he was not intending to annoy Officer Said with the memes. Rather, he was just giving him "a little ribbing" for being a "brown nose," based on Officer Said's quick advancement within the command, where he was assigned as a sergeant's

operator and was selected to represent the precinct at the dinner with the Attorney General. Respondent had no ill-will toward Officer Said, and considered the texts “friendly banter.” Officer Said did not complain to him about the memes. (Tr. 196-98, 207-09, 215-16, 220)

With respect to the allegedly disparaging remarks, Respondent denied making any of those comments to Officer Said or Sergeant Samuel. Specifically, he testified that he never said that they received overtime because of their skin color; indeed, Respondent, himself, led the command in overtime, and had no reason to complain about overtime received by anyone else. Moreover, Respondent had no reason to believe that overtime was assigned within the command based on anything other than seniority and merit. Respondent also denied making any comments to Officer Said about being a terrorist or a bomber who did not belong on the job, insisting that the alleged conversation in the locker room never took place. He maintained that he does not harbor any negative feelings about Muslims. According to Respondent, he first learned of these accusations when he received his EEO complaint in June 2020. (Tr. 200-01, 209-14)

Specification 1 charges Respondent with inappropriately sending offensive, disparaging text messages to Officer Said. Specifically, it is alleged that on December 17, 2019, Respondent texted two memes to Officer Said: one depicted a pack of “Ass Kisser” chewing gum, and the second showed a package of “Knee Pads” with a sexually graphic illustration on the box. The images were a part of a series of texts that were precipitated by a photograph showing Officer Said, as a representative of the 61 Precinct, attending a dinner party with the Attorney General. (Dept. Exs. 2-6)

At trial, Respondent admitted to texting the memes to Officer Said. He argues, however, that the texts were merely “friendly banter,” making fun of Officer Said for being a “brown nose.” Counsel for Respondent notes that Officer Said did not make an immediate complaint

about the texts, though I credit Officer Said's testimony that he was, nevertheless, "a little offended" at the time they were sent.

Section 205-37 of the Patrol Guide prohibits the display of offensive material, including through text messages. To be sure, communications involving innocuous teasing would not necessarily rise to the level of misconduct. However, Respondent went further than that by including in his texts the two inappropriate memes. This was not a situation where Respondent merely made a good-natured comment to Officer Said about being a "brown nose." Rather, Respondent took the extra step of attaching two offensive memes to his text messages, without regard to how they might be perceived by the recipient.

The "Knee Pad" meme was particularly offensive. It included a graphic image of a sexual act being performed. The texting of these memes to another member of the service was contrary to the good order, efficiency, and discipline of the Department. Accordingly, I find Respondent guilty of Specification 1.

Specification 3, charges Respondent with making inaccurate statements during his Department interview on September 15, 2020. Specifically, it is alleged that he provided inaccurate answers to questions about whether he sent the offending memes to Officer Said. During the interview, Respondent conceded that he might have texted the memes, but never actually acknowledged that he did, in fact, send them.

On the one hand, it is undisputed that during the interview, Respondent was shown only a photograph of the two memes (Resp. Ex. A). He was not provided with the surrounding context of the full text exchange between Respondent and Officer Said. Sergeant Beary of the Equal Employment Opportunity Division, who questioned Respondent, acknowledged that he did not provide the full context to Respondent at the time of the interview; indeed, he did not even have

the related text messages in his possession when he interviewed Respondent, and only obtained them on a later date at the direction of the Department Advocate. (Tr. 85-88).

Nevertheless, the memes in question are distinctive enough for Respondent to have recalled sending them to Officer Said, even nine months later. The graphic "Knee Pad" meme, in particular, is one that would not reasonably slip someone's mind. Respondent testified that he never sent those memes to any other MOS, which is even more reason for him to have recalled the one time he did send them, to Officer Said in December 2019.

In light of Respondent's repeated evasive answers about sending the memes, I find that the Department Advocate has met its burden of proving that Respondent made inaccurate statements during his official Department interview. Accordingly, I find Respondent guilty of Specification 3.

Specification 2 charges Respondent with making inappropriate remarks, on multiple occasions, to Officer Said and Sergeant Samuel, regarding race, religion, national origin, color, or ethnicity. Specifically, there was testimony as to three separate occasions where Respondent allegedly made disparaging comments: both Officer Said and Sergeant Samuel testified that there was an incident inside the precinct where Respondent stated that they received overtime because of their skin color; Sergeant Samuel testified that there was an incident in the precinct parking lot where Respondent again stated to them that they receive overtime due to their skin color; and Officer Said testified that there was an incident in the locker room where Respondent stated that Muslims are terrorists and bombers, and do not belong on the job or in the country.

Respondent denied making any of the alleged remarks. In support of the accusations, the Department Advocate essentially relies upon the accounts provided by Officer Said and Sergeant Samuel at trial. The three alleged incidents will be individually assessed below.

With respect to the alleged statement inside the precinct regarding overtime, both Officer Said and Sergeant Samuel corroborated each other's account that the statement was, in fact, made. Although there were some minor discrepancies as to where inside the stationhouse the statements were made, Officer Said and Sergeant Samuel were essentially consistent in their details as to what Respondent said to them. They each described how Respondent stated that they receive overtime because of their skin color.

This tribunal is mindful that neither Officer Said nor Sergeant Samuel reported this incident in a timely manner. The silence of Sergeant Samuel was of particular concern since he was a mandatory reporter. However, I credit the truthfulness of Sergeant Samuel's explanation that he attributed Respondent's conduct to his "ignorance" and "immaturity," and decided not to make a complaint.

Also of concern was the lack of precision as to when this incident occurred. Due to the delay in reporting, the witnesses were only able to provide a time frame of several months for when the statements were made. (*See testimony of Sergeant Richard Beary, Tr. 91-92*)

Nevertheless, in light of the consistency of their testimony, and the corroboration Officer Said and Sergeant Samuel provided for each other's account, I find that the Advocate has met its burden of proof with respect to this incident. The record has established, by a preponderance of the credible evidence, that Respondent made an offensive and inappropriate comment to Officer Said and Sergeant Samuel, stating that they received overtime because of their skin color.

Regarding the similar statement allegedly made in the parking lot, the proof was less persuasive. The only evidence supporting this allegation was the testimony of Sergeant Samuel. His testimony on this point was more equivocal than his testimony about the remarks made inside the precinct. On direct examination, Sergeant Samuel initially described the occurrence

inside the precinct as “the one incident that I remember.” (Tr. 106) After testifying about that incident, Sergeant Samuel was asked whether Respondent ever made other comments like that to him; he answered, “Not in front of me, no.” (Tr. 109) Following further prompting, he then described an incident in the parking lot where similar comments were allegedly made by Respondent.

Additionally, according to Sergeant Samuel’s account, Officer Said also was present when this statement in the parking lot was made. However, Officer Said testified that the only time Respondent mentioned anything about receiving overtime because of skin color was the incident inside the precinct discussed above (Tr. 169-70), and he did *not* reference the alleged incident in the parking lot at all during his testimony. As such, unlike the precinct occurrence discussed above, Officer Said did not confirm Sergeant Samuel’s claim that statements also were made in the parking lot; this omission was significant since Officer Said was one of the two individuals to whom the comment was allegedly directed.

In light of Sergeant Samuel’s vaguery of memory on this point, and the lack of confirmation from Officer Said, I find that the Advocate did not meet its burden of proving, by a preponderance of the credible evidence, that Respondent made the statement in the parking lot.

With respect to the comments allegedly made to Officer Said in the locker room, the only evidence in support of that allegation was the testimony of Officer Said. After carefully listening to Officer Said on the witness stand, and observing his demeanor, I am persuaded by the evidence that the remarks were, in fact, made by Respondent.

On direct examination, Officer Said testified that Respondent looked at his name tag and stated, “You Muslim people shouldn’t be here, shouldn’t be on the job.” He also stated that they

are “bombers” and “in terrorist groups.” By way of background, Officer Said also noted in his testimony that Respondent had heard Officer Said speaking Arabic in the past.

Again, this tribunal is mindful that Officer Said did not promptly report this incident. He waited months before registering a complaint, when, according to Officer Said, things between him and Respondent “got out of control.” Nevertheless, I was persuaded as to the sincerity of Officer Said’s explanation for the delay in reporting: he “didn’t want any problems,” and “just want[ed] to work in peace, come and go, and be left alone.” I find that the delay in reporting was, indeed, due to Officer Said’s preference, as a relatively new member of the command, to avoid any difficulties with Respondent.

Also, although there was no corroboration that these alleged statements in the locker room were actually made, that lack of corroboration was not as problematic as with the alleged statement in the parking lot discussed above. In the parking lot allegation, Officer Said was allegedly one of the two individuals to whom the comment was directed, so his failure to confirm the incident in his testimony was a significant omission. In contrast, the only people present for the incident in the locker room were Respondent and Officer Said, and so there was no one else to confirm what was said. Indeed, it is to be expected that not all incidents of this nature will occur in front of an audience.

On the witness stand, Officer Said openly praised Respondent’s performance as a police officer, and did not convey a sense that he was fabricating or embellishing his interactions with Respondent. Officer Said was consistent in the details of the incident, including the context in which it occurred, and I credit his account. Viewing the evidence as a whole, I find that the Department Advocate has met its burden of proving that Respondent made disparaging comments in the locker room based on Officer Said’s perceived natural origin and religion.

As such, since I find that the credible evidence was sufficient to prove that Respondent made two of the three inappropriate statements, the one in the precinct to Officer Said and Sergeant Samuel about getting overtime because of their skin color, and the one in the locker room regarding Muslims being bombers and terrorists, I find Respondent guilty-in-part of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 6, 2011, has been found guilty of sending offensive text messages, providing inaccurate responses during his official Department interview, and on two occasions making disparaging remarks to a member of the service. The Department Advocate recommends that Respondent forfeit a total of 50 vacation days, and be placed on one-year dismissal probation. Specifically, the Advocate asks that the presumptive penalty for each of the three offenses be imposed, and that a period of probation be added as well.

With respect to the text messages, the presumptive penalty for improper dissemination of offensive material is 20 penalty days, while a mitigated penalty as low as 10 days is authorized as well. To be sure, Respondent exhibited poor judgement and crossed the line by sending the

offensive memes, particularly the one with the graphic “Knee Pads” image. But I credit Respondent’s testimony that when he sent the texts he was not motivated by ill-will toward Officer Said. As defense counsel noted, there was no indication here that in sending the memes, Respondent was targeting Officer Said based on his actual or perceived status within an ethnic or religious group or regarding his sexual orientation. Rather, Respondent was “ribbing” Officer Said for being a brown-nose, the way Respondent, himself, had been teased when he was a younger officer. In striking a balance between the inappropriateness of the offensive texts, and the lack of malicious intent on the part of Respondent, I recommend a penalty of ten (10) vacation days, which will adequately address the misconduct under Specification 1.

Regarding Respondent’s inaccurate statements, the presumptive penalty is 10 penalty days, while a mitigated penalty as low as 5 days is authorized as well. Respondent was evasive when questioned about the text messages, failing to acknowledge that he actually sent the offensive memes to Officer Said. The goal of any internal investigation is to get to the truth, and Respondent’s inaccurate answers ran contrary to that goal, for which there must be appropriate accountability.

However, in fairness to Respondent, at the time he was questioned, which was 9 months after the incident, he was not provided the surrounding context of the full text exchange with Officer Said. Indeed, the questioner was not yet in possession of the related messages, including the photograph of Officer Said at the dinner. Although he did not definitively admit to sending the memes, Respondent did acknowledge that it was possible he sent them. Under the specific circumstances presented here, I recommend that the mitigated penalty of five (5) vacation days is appropriate for Specification 3.

Of the three specifications, the one involving the disparaging remarks is most troubling. On two separate dates, Respondent made wholly inappropriate comments to fellow members of the service: on one occasion, he said to Officer Said and Sergeant Samuel that they receive overtime based on their skin color, and in a second incident, inside the locker room, Respondent stated to Officer Said, "You Muslim people shouldn't be here, shouldn't be on the job," because they are "bombers" and "in terrorist groups." With these highly insensitive, bigoted remarks, Respondent demeaned more than the colleagues to whom they were directed; with his words, Respondent maligned a major religion. Comments such as these constitute completely unacceptable work-place conduct, and there must be appropriate accountability.

The presumptive penalty for making disparaging remarks such as these is 20 penalty days. However, taking into account that Respondent made these remarks on two separate occasions, I recommend that the forfeiture of twenty-five (25) vacation days is fair and reasonable to address the misconduct under Specification 2.

The Department Advocate also recommends that Respondent be placed on dismissal probation, based on his multiple acts of misconduct. However, under the specific circumstances in this matter, including Respondent's strong record with the Department, I do not believe that a period of monitoring is warranted. Respondent has no formal disciplinary record during his 11 years of service. He has been awarded 11 medals for Excellent Police Duty, and 8 for Meritorious Police Duty. Respondent has received consistently strong performance evaluations, including ratings of "Exceptional" in his last three evaluations.

To be sure, Respondent's misconduct in this case is serious, and the imposition of a significant number of penalty days is necessary and appropriate. It is the hope and expectation of this tribunal that the forfeiture of forty (40) vacation days will serve as a serious deterrent

from further misconduct by Respondent. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit forty (40) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER BRIAN HENN
TAX REGISTRY NO. 950580
DISCIPLINARY CASE NO. 2021-23353

Respondent was appointed to the Department on July 6, 2011. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2019, 2020 and 2021. He has been awarded eleven medals for Excellent Police Duty and eight medals for Meritorious Police Duty.

Respondent has no disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials